IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No. 5947 of 1995

For Approval and Signature:

HONOURABLE MR.JUSTICE P.B.MAJMUDAR

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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MANJULABEN DAHYABHAI KANSARA

Versus

MUNCIPAL CORPORATION OF THE CITY OF AHMEDABAD

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Appearance :
MR JT TRIVEDI for Petitioner
MR KAUSHAL D PANDYA for MR.PRASHANT G DESAI for Respondent

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CORAM : HONOURABLE MR.JUSTICE P.B.MAJMUDAR

Date : 06/10/2005

ORAL JUDGMENT

1. By filing this petition, the petitioner has challenged the decision of the

respondent Corporation by which the Corporation has turned down the prayer of the petitioner for giving alternative accommodation in terms of resolution No. 555 of 1992-93 dated 18.6.1992 passed by the Corporation.

2. The front portion of the shop of the petitioner was acquired by the Corporation for road widening. It seems that initially the petitioner did not object for such acquisition but subsequently, the petitioner came to know that alternative accommodation was given to transferees of certain shops whose shops were also acquired along with the petitioner's shops. The petitioner, after gathering knowledge about the resolution dated 18.6.1992 passed by the Corporation, preferred Special Civil Application No. 6998 of 1992 before this Court. The said Special Civil Application was disposed of by giving liberty to the petitioner to make appropriate representation in the matter. The petitioner thereafter made a representation to the Corporation dated 14.10.1994 requesting the Corporation to give alternative accommodation to the petitioner. In her representation, the petitioner has mentioned that substantial portion of her shop was acquired by the Corporation for the purpose of road widening. Along with the representation, the petitioner had also forwarded a copy of the resolution passed by the Corporation referred to hereinabove. The petitioner has requested the authorities to give her alternative accommodation so that she can continue her business.

3. The Corporation, by its order dated 6.1.1995 rejected the said prayer of the petitioner on the ground that alternative accommodation is provided only to those persons whose 50% or more area of property

is acquired for road widening as against which only 8 sq. Mtr. area out of 67 sq. Mtr. area of the petitioner's property was acquired, and, therefore, the petitioner is not entitled to the benefit of the aforesaid resolution.

4. Being aggrieved by the said order dated 6.1.1995, the petitioner has approached this Court by way of this petition.

5. At the time of hearing of this petition, Mr. Trivedi submitted that the decision by which the Corporation has concluded that only 8 sq. mtr. area was acquired for the purpose of road widening is factually incorrect. Mr. Trivedi submitted that more than 50% area is acquired and for that purpose, he has relied on the map produced at page 31. It is submitted by Mr. Trivedi that as per the said map 11.046 sq. mtr area was acquired out of the total area of the shop admeasuirng 18.49 sq. mtrs. He therefore submitted that more than 50% area of the shop was acquired by the Corporation, and, therefore, the petitioner is entitled to get benefit of the said resolution.

6. It is required to be noted that the respondent has not filed affidavit-in-reply to the present petition. The petitioner even filed an additional affidavit on 5th May 2005 and the averments made therein also is not controverted by the respondent Corporation by filing a reply. Under the circumstances, it is not possible for this Court to come to a clear finding as to the actual area which was acquired by the Corporation for road widening. Considering the aforesaid aspect of the matter and considering the additional material which was produced by way of a map and other documents produced on record, it would be

just and proper to direct the respondent Corporation to take a fresh decision in the light of the aforesaid material produced on record. The Corporation is, therefore, directed to decide the issue afresh after considering the documents produced by the petitioner in this petition and other material, if any, that may be produced by the petitioner and after affording an opportunity of hearing to the petitioner. If ultimately it is found that the petitioner is entitled to the benefit of the resolution dated 10.06.92 the same may be granted to the petitioner.

7. The petition is partly allowed. The matter is remitted to the Corporation for taking a fresh decision. Before taking the decision, the petitioner may be permitted to produce necessary evidence in this behalf to point out the area acquired by the Corporation for the purpose of road widening. The Corporation may take a fresh decision within a period of three months from today. Rule made partly absolute accordingly. No order as to costs.

Direct service is permitted.

[P. B. MAJMUDAR, J.]

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